

## **REMARKS**

### **A. Background**

The present Amendment is in response to the Office Action mailed April 21, 2008. Claims 1-35, and 58-70 were previously canceled. Claims 36, 38, 45, 48, 50, and 52 are amended<sup>1</sup> and claims 37, 71, and 72 are canceled. Claims 36 and 38-57 are now pending in view of the above amendments.

Reconsideration of the application is respectfully requested in view of the above amendments to the claims and the following remarks. For the Examiner's convenience and reference, Applicant's remarks are presented in the order in which the corresponding issues were raised in the Office Action.

Please note that the following remarks are not intended to be an exhaustive enumeration of the distinctions between any cited references and the claimed invention. Rather, the distinctions identified and discussed below are presented solely by way of example to illustrate some of the differences between the claimed invention and the cited references. In addition, Applicant's requests that the Examiner carefully review any references discussed below to ensure that Applicant's understanding and discussion of the references, if any, is consistent with the Examiner's understanding.

### **B. Prior Art Rejections**

#### **1. Rejections Under 35 U.S.C. §102**

The Office Action rejected claims 36-40, 44, 45, 47, 50-51, 54-56, and 71 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,810,884 (*Kim*).<sup>2</sup> Claim 37 has been canceled. With respect to the remaining claims, Applicant respectfully traverses this rejection.

The Office Action asserted that "Kim discloses an apparatus for facilitating sealing of a puncture formed in a proximal lateral surface, the apparatus comprising a bar having a proximal and distal ends and a first bore extending laterally therethrough, and a filament disposed through

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<sup>1</sup> Support for the claim amendments can be found in the specification as originally filed.

<sup>2</sup> Although the prior art status of the cited art in this and the remaining rejections is not being challenged at this time, Applicant reserves the right to challenge the prior art status of the cited art at any appropriate time, should the need arise. Accordingly, any arguments and amendments made herein should not be construed as acquiescing to any prior art status of the cited art.

the first bore.” (Office Action, page 2.) However, independent claim 36 has been amended to recite, in part, “the filament having a first free end and a second free end, the filament being slidably disposed through the first bore, the bar being slidable relative to the filament,” thereby allowing the filament to be slidably retracted from the bar. Similarly, independent claim 50 has been amended to recite, in part, “a filament having a first free end and a second free end, the filament being slidably disposed through the first eyelet, the bar being slidable relative to the filament.” Applicant respectfully submits that *Kim* does not disclose, teach, or suggest these elements.

Rather, in direct contrast, *Kim* teaches the use of “two steering cables [which] remain rotatably attached to the buttressing support member.” (See, e.g., col. 27, ll. 21-23.) Furthermore, *Kim* teaches away from the retractable nature of the filament of the claimed invention in stating that “the proximal ends [of the steering cables] are desirably joined to the skin as sutures for permanent and effective sealing of the puncture site.” (See, col. 28, ll. 65-67 (emphasis added).) Applicant respectfully submits that the steering cables of *Kim* are not the same as “a filament having a first free end and a second free end, the filament being slidably disposed through the first bore [or first eyelet], the bar being slidable relative to the filament,” as recited, in part, by claims 36 and 50 respectively.

Therefore, *Kim* fails to disclose, teach, or suggest all of the elements of claims 36 and 50. Consequently, *Kim* does not anticipate claims 36 and 50. Accordingly, Applicant respectfully requests withdrawal of the rejection of independent claims 36 and 50 under § 102. Furthermore, dependent claims 38-40, 44, 45, 47, 51, and 54-56 are allowable for at least the same reasons claims 36 and 50 are allowable.

The Office Action rejected claims 36, 39, 40, 44 and 71 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. RE36974 (*Bonutti*). Claim 71 has been canceled. With respect to the remaining claims, Applicant respectfully traverses this rejection.

The Office Action asserted that “*Bonutti* discloses an apparatus for facilitating sealing of a puncture formed in a proximal lateral surface of the vessel, the apparatus comprising a bar having proximal and distal ends and a first bore extending laterally therethrough and a filament disposed through the first bore.” (Office Action, page 4.) However, independent claim 36 has been amended to recite, in part, “a delivery sheath having proximal and distal ends, a lumen

extending therebetween to contain the bar and filament, and a sharpened tip at the distal end.” Applicant respectfully submits that *Bonutti* does not disclose, teach, or suggest this element.

Rather, in direct contrast, *Bonutti* discloses an inserter 80 with a flange portion 94 at its distal end. (See, Figs. 5-7.) In practice, “[t]he inserter guide flange portion 94 is placed against the outer surface 61 of the bone 60,” and the anchor 10 is pushed into “the desired position in the opening 70 in the bone 60.” (See, col. 5, ll. 9-11, 20-23.) Applicant respectfully submits that the inserter 80 of *Bonutti* is not the same as “a delivery sheath having proximal and distal ends, a lumen extending therebetween to contain the bar and filament, and a sharpened tip at the distal end” as recited, in part, by claim 36.

Therefore, *Bonutti* fails to disclose, teach, or suggest all of the elements of claim 36 as currently amended. Consequently, *Bonutti* does not anticipate claim 36. Accordingly, Applicant respectfully requests withdrawal of the rejection of independent claim 36 under § 102. Furthermore, dependent claims 39, 40, and 44 are allowable for at least the same reasons.

The Office Action rejected claims 50-51 and 57 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,411,520 (*Nash*). Applicant respectfully traverses this rejection.

The Office Action asserted that “Nash et al. discloses an apparatus for facilitating sealing of a puncture formed in a proximal lateral surface of a vessel, the apparatus comprising a bar having proximal and distal ends and a first eyelet to the bar (fig. 12), [and] a filament disposed through the eyelet.” (Office Action, page 5.) However, claim 50 has been amended to recite, in part, “a filament having a first free end and a second free end, the filament being slidably disposed through the first eyelet, the bar being slidable relative to the filament.” Applicant respectfully submits that *Nash* does not disclose, teach, or suggest this element.

Rather, in direct contrast, *Nash* teaches that “the filament 34 is threaded through the cylindrical opening 60 as shown clearly in FIG. 5 to connect plug member 30 to the anchor member 32. . . . From there the filament 34 extends through the opening 36’B in the spacer member 36’ and then back to the plug . . . where it terminates in a loop . . . . The loop is secured by a knot 68, whose details are shown in FIG. 6.” (See, col. 8, ll. 22-44; see also, Figures 2, 3, and 6.) Applicant respectfully submits that the filament 34 having at least one end secured by a knot 68 is not the same as “a filament having a first free end and a second free end, the filament being slidably disposed through the first eyelet, the bar being slidable relative to the filament” as

recited, in part, by claim 50 as currently amended. Furthermore, by securing the filament in a knot, *Nash* specifically teaches away from the retractable nature of the filament of the claimed invention as currently amended.

Therefore, *Nash* fails to disclose, teach, or suggest all of the elements of claim 50 as currently amended. Consequently, *Nash* does not anticipate claim 50. Accordingly, Applicant respectfully requests withdrawal of the rejection of independent claim 50 under § 102. Furthermore, dependent claims 51 and 57 are allowable for at least the same reasons.

The Office Action rejected claims 36, 44, 48, and 71 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,545,178 (*Kensey*). Claim 71 has been canceled. With respect to the remaining claims, Applicant respectfully traverses this rejection.

The Office Action asserted that “*Kensey* et al. disclose an apparatus for facilitating sealing of a puncture formed in a proximal lateral surface of a vessel, the apparatus comprising a bar having a proximal and distal ends and a first bore extending laterally therethrough, and a filament disposed through the first bore.” (Office Action, page 5.) However, independent claim 36 has been amended to recite, in part, “a delivery sheath having proximal and distal ends, a lumen extending therebetween to contain the bar and filament, and a sharpened tip at the distal end.” Applicant respectfully submits that *Kensey* does not disclose, teach, or suggest this element.

Rather, in direct contrast, *Kensey* specifically teaches the use of a deployment instrument 32 “arranged to be used after the minimally invasive interventional procedure (e.g., laparoscopic, endoscopic, arthroscopic, procedure) is finished to seal the opening to prevent the passage of tissue or fluid therethrough.” (See, col. 10, ll. 50-54.) Specifically, the deployment system 32 extends “through a conventional or non-conventional trocar” or “through the puncture” itself “to place the device 20 in the desired position within the puncture.” (See, col. 7, ll. 59-67.) Applicant respectfully submits that the deployment system 32 configured to extend through a trocar or puncture as taught by *Kensey* is not the same as “a delivery sheath having proximal and distal ends, a lumen extending therebetween to contain the bar and filament, and a sharpened tip at the distal end,” as recited, in part, by claim 36 as amended.

Therefore, *Kensey* fails to disclose, teach, or suggest all of the elements of claim 36 as currently amended. Consequently, *Kensey* does not anticipate claim 36. Accordingly, Applicant

respectfully requests withdrawal of the rejection of independent claim 36 under § 102. Furthermore, dependent claims 44 and 48 are allowable for at least the same reasons.

**2. Rejections Under 35 U.S.C. § 103**

The Office Action rejected claims 46, 52, and 53 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,810,884 (*Kim*). Applicant respectfully traverses this rejection. As explained in more detail above, *Kim* fails to disclose, teach, or suggest each and every element of independent claims 36 and 50 as currently amended. Furthermore, the inventions claimed in independent claims 36 and 50 are not obvious in light of *Kim*. Accordingly, claim 46, 52, and 53 are allowable for at least the same reasons set forth above. Therefore, Applicant respectfully requests withdrawal of the rejection of claims 46, 52, and 53 under § 103.

The Office Action rejected claims 41-43, 57, and 72 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,810,884 (*Kim*) in view of U.S. Patent No. 5,411,520 (*Nash*). Claim 72 has been canceled. With respect to the remaining claims, Applicant respectfully traverses this rejection. As explained in more detail above, both *Kim* and *Nash* fail to disclose, teach, or suggest each and every element of independent claims 36 and 50 as currently amended. Furthermore, the respective failures of *Kim* and *Nash* are not remedied by their combination. Accordingly, dependent claims 41-43 and 57 are allowable for at least the same reasons claims 36 and 50 are allowable. Therefore, Applicant respectfully requests withdrawal of the rejection of claims 41-43 and 57 under § 103.

The Office Action rejected claims 41-43 and 72 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. RE36974 (*Bonutti*) in view of U.S. Patent No. 5,411,520 (*Nash*). Claim 72 has been canceled. With respect to the remaining claims, Applicant respectfully traverses this rejection. As explained in more detail above, *Bonutti* fails to disclose, teach, or suggest each and every element of independent claim 36 as currently amended. Furthermore, the failures of *Bonutti* are not overcome by the combination of *Bonutti* with *Nash*. Accordingly, dependent claims 41-43 are allowable for at least the same reasons stated above. Therefore, Applicant respectfully requests withdrawal of the rejection of claims 41-43 under § 103.

The Office Action rejected claims 45-47 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. RE36974 (*Bonutti*) in view of U.S. Patent No. 6,506,197 (*Rollero*). Applicant respectfully traverses this rejection. As explained in more detail above, *Bonutti* fails to disclose, teach, or suggest each and every element of independent claim 36 as currently amended. Furthermore, the failures of *Bonutti* are not remedied by *Rollero*. Accordingly, dependent claims 45-47 are allowable for at least the same reasons Claim 36 is allowable. Therefore, Applicant respectfully requests withdrawal of the rejection of claims 45-47 under § 103.

The Office Action rejected claim 49 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,545,178 (*Kensey*) in view of U.S. Patent No. 6,506,197 (*Rollero*). Applicant respectfully traverses this rejection. As explained in more detail above, *Kensey* fails to disclose, teach, or suggest each and every element of independent claim 36 as currently amended. Furthermore, the failures of *Kensey* are not remedied by *Rollero*. Accordingly, dependent claim 49 is allowable for at least the same reasons claim 36 is allowable. Therefore, Applicant respectfully requests withdrawal of the rejection of claim 49 under § 103.

C. **Conclusion**

In view of the foregoing, Applicant respectfully submits that the other rejections to the claims are now moot and do not, therefore, need to be addressed individually at this time. It will be appreciated, however, that this should not be construed as Applicant acquiescing to any of the purported teachings or assertions made in the last action regarding the cited art or the pending application, including any official notice. Instead, Applicant reserves the right to challenge any of the purported teachings or assertions made in the last action at any appropriate time in the future, should the need arise. Furthermore, to the extent that the Examiner has relied on any Official Notice, explicitly or implicitly, Applicant specifically requests that the Examiner provide references supporting the teachings officially noticed, as well as provide the required motivation or suggestion to combine references with the other art of record.

Applicant believes the claims as amended are in allowable form. In the event that the Examiner finds remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, or which may be overcome by an Examiner's Amendment, the Examiner is requested to contact the undersigned attorney.

Dated this 20<sup>th</sup> day of August, 2008.

Respectfully submitted,

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